**GANESPARAN NAGALIAGAM**

**v.**

**MALAYSIAN MEDICAL COUNCIL**

HIGH COURT MALAYA, SEREMBAN
MUSTAPHA HUSSAIN J
[ORIGINATING MOTION NO. 37 OF 1988]
29 SEPTEMBER 1989

***ADMINISTRATIVE LAW:*** *Application for order of certiorari - Applicant 'unregistered person' under Medical Act 1971 - Charge framed by Preliminary Inquiry Committee - Order of suspension by MMA - Domestic inquiry - Scope of - Whether there is provision for appeal.*

This is an application for an order of *certiorari* to quash the order of the respondent made on 4 May 1988 suspending the applicant from the Medical Register for six months with effect from 26 May 1988.

One Mr. Ranason s/o Mariappa, an unregistered person under the Medical Act 1971 was found examining and giving treatment to patients at a clinic in Seremban. Upon a complaint thereto, a Preliminary Investigation Committee was set up under the provisions of the Medical Regulations and Medical Act 1971 which conducted an investigation and after deliberations framed a charge against the applicant. The matter then proceeded to the Malaysian Medical Council and after deliberations and submissions by the applicant's Counsel, the Malaysian Medical Council made the order of suspension against the applicant.

The applicant appointed new solicitors and filed two applications to the High Court, one, an application for an order of *certiorari*, the application which is the subject matter of this judgment, and the other an appeal against the decision of the Malaysian Medical Council.

**Held:**

**[1]** An applicant seeking an order of *certiorari* is not obliged to have exhausted his right of appeal within the administrative hierarchy nor does he need to have exhausted his right of appeal to a Court of law.

**[2]** Section 31 of the Medical Act 1971 under which the proceedings against the applicant were instituted provides for an appeal to the High Court. The complaints the applicant has brought up in the application for *certiorari* can and should be taken up in the appeal itself and both in the High Court. All the matters and complaints now raised in this Court for an order of *certiorari* should be taken up in the appeal itself.

*[The application for an order of certiorari is dismissed with costs.]*

**Case referred to:**
*Lai Cheng Cheong v. Sowaratnam [1983] CLJ (Rep) 216*

**Legislation referred to:**
Medical Act 1971, s. 31

*For the applicant - James Leslie Ponniah; M/s. Stanley Ponniah, Ng & Soo*
*For the respondent - Aiznin Sairi b. Sulaiman; M/s. Aziz & Mazlan*

**JUDGMENT**

**Mustapha Hussain J:**

The brief facts of the case are as follows:

One Mr. Kanason s/o Mariappan, an unregistered person under the Medical Act 1971 was found examining and giving treatment to patients at Klinik Templer, No. 18 Jalan Tun Dr. Ismail, Seremban between 14 January 1987 and 23 January 1987. Upon a complaint thereto, a Preliminary Investigation Committee set up under the provision of the Medical Regulations and Medical Act 1971 conducted an investigation and after deliberation framed a charge against the applicant.

The matter then proceeded to the Malaysian Medical Council on 26 April 1988 applicant and his Counsel Mr. P.S. Rajan were present. After deliberation and submission by applicant's Counsel, the Malaysian Medical Council made the order of suspension against the applicant.

The applicant appointed new solicitors and filed two applications to the High Court, one, an application for an order of *certiorari*, the application which is the subject matter of this judgment, and the other an appeal against the decision of the Malaysian Medical Council.

It is true an applicant seeking an order of *certiorari* is not normally obliged to have exhausted his right of appeal within the administrative hierarchy nor does he need to have exhausted his right of appeal to a Court of law (see the Federal Court case of *Lai Cheng Cheong v. Sowaratnam* [1983] CLJ (Rep) 216.

However in our present case, the Act under which the proceedings against the applicant were instituted, itself provides (Section 31 of the Medical Act 1971) for an appeal to the High Court. The complaints the applicant has brought up in the application for *certiorari* can and should be taken up in the appeal itself, and both to the High Court. It is quite obvious that the applicant is taking two bites on the same appeal. The appeal has been transferred to the High Court at Kuala Lumpur and it is the view of this Court that all the matters and complaints now raised in this Court for an order of *certiorari*, should be taken up in the appeal itself.

By way of passing, a domestic inquiry cannot be equated and be held to be on the same footing as a criminal prosecution. The omission of recording or writing down that all the members of the Preliminary Investigation Committee were unanimous or by majority in their decisions, is not fatal and this is made more so by the affidavit of the Chairman of the Preliminary Investigation Committee Prof (Dr.) Mahmud Mohd Nor who stated that it was a majority by the applicant. There is no affidavit by the applicant (or by the other members of the Preliminary Investigation Committee to state otherwise). I must emphasise that the remarks is only by way of passing and has no bearing on the decision on this point at the appeal.

Similarly on the point of the legal adviser attending the sitting of the Preliminary Investigation Committee. This Court also by way of passing is of the view that it is the duty of the legal adviser to advise and in advising, he has to touch upon the facts. Nowhere is there any indication to show the legal adviser of the Preliminary Investigation Committee did make any decision. Anyway the remarks made without any intention of swaying the other High Court in deciding the appeal.

It is ridiculous for two High Courts to decide on the same issues and the application here for an order of *certiorari* is dismissed with costs.

Also found at [1990] 1 CLJ 269